

EXHIBIT 3

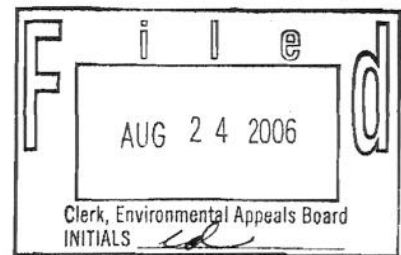
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(Slip Opinion)

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**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

In re:)	
)	
Prairie State Generating Company)	PSD Appeal No. 05-05
)	
PSD Permit No. 189808AAB)	
)	

[Decided August 24, 2006]

ORDER DENYING REVIEW

*Before Environmental Appeals Judges Scott C. Fulton,
Edward E. Reich, and Anna L. Wolgast.*

requiring it to adopt the process methods that were proprietary to other firms within the fiberglass industry. *See In re Knauf Fiber Glass, GmbH*, 9 E.A.D. 1, 8-11 (EAB 2000).

In the present case, we are satisfied that IEPA took a sufficiently hard look at Prairie State's proposed Facility design to determine whether further emissions reductions would be achievable through inherently lower-polluting processes or methods while still achieving Prairie State's purpose or basic design for the Facility. In particular, IEPA specifically required Prairie State to submit a detailed analysis of Integrated Gasification Combined Cycle ("IGCC") as a method for controlling emissions from Prairie State's proposed Facility. *See* Letter from Donald E. Sutton, P.E., Manager Permit Section, IEPA Division of Air Pollution Control, to Dianna Tickner, Prairie State (Mar. 29, 2003).³⁰ Notably, IGCC is not simply an add-on emissions control technology, but instead would have required a completely redesigned "power block." Briefly, IGCC involves the conversion of coal to a synthetic gas, which is then burned in a combustion turbine. An IGCC power plant requires the sequential combination of cryogenic oxygen production, gasification (conversion of coal to raw syngas), heat recovery, syngas scrubbing and desulfurization, sulfur recovery, and a syngas-fired combined cycle power block. SFA Pacific, Inc., *Evaluation of IGCC to Supplement BACT Analysis of Planned Prairie State Generating Station* at 6 (May 11, 2003). As we explain below in Part II.B.3, IEPA ultimately concluded that IGCC would not be required for control of SO₂ emissions on the grounds that it has not been shown to achieve greater reductions than the technology proposed by Prairie State. Nevertheless, IEPA's demand that Prairie State provide a detailed analysis of IGCC, which IEPA noted has the promise to achieve greater reductions, demonstrates that IEPA's application of the policy against redefining the design of the source through application of BACT did not treat "very few" design

³⁰ IEPA explained that "IGCC is a 'production process' that can be used to produce electricity from coal," that "IGCC is a technically feasible production process," and that IEPA "has determined that IGCC qualifies as an alternative emission control technique that must be fully addressed in the BACT demonstration for the proposed plant." Letter from Donald E. Sutton, P.E., Manager Permit Section, IEPA Division of Air Pollution Control, to Dianna Tickner, Prairie State at 1 (Mar. 29, 2003).

changes as consistent with the proposed Facility's basic design -- selection of IGCC would have required extensive design changes to Prairie State's proposed Facility.

Thus, we reject Petitioners' allegation that "IEPA's interpretation would allow a permit applicant to avoid all BACT review by including its preferred fuel, add-on controls, and other pollution controls and hide behind the claim that requiring anything different would unlawfully 'redefine' the proposed source." Petition at 32. Likewise, we reject Petitioners' allegation that "basic design" used as a demarcation between what may or may not be modified through application of BACT would result in an excessive reliance on the "applicant's say-so" eliminating all but a "very few" pollution controls as inconsistent with the "basic design." See Response to OAR Brief at 3, 7.³¹ To the contrary, IEPA's consideration of IGCC demonstrated that IEPA gave due regard to Prairie State's objective in submitting a permit application for the proposed Facility, namely development of an electric power generating plant that would be co-located and co-permitted with a 30-year supply of fuel, and then explored every potential add-on technology and potentially lower-emitting production processes or methods consistent with that basic design to determine the maximum emissions reductions achievable for the Facility.

For the foregoing reasons, we conclude that Petitioners have not shown that IEPA clearly erred when it determined that consideration of low-sulfur coal, because it necessarily involves a fuel source other than the co-located mine, would require Prairie State to redefine the fundamental purpose or basic design of its proposed Facility and that,

³¹ We reject Prairie State's suggestion that "the coal inherently defines the design of the plant." Prairie State Response at 45. OAR appropriately states that use of low-sulfur coal would not require Prairie State to "fundamentally change the power block at the proposed source" and that the sulfur content of the coal is not itself the "basic design element of the facility." OAR Brief at 10. Rather, as stated in the text, the basic design or fundamental purpose, as found by IEPA, is a coal-fired electric power generating station co-located and co-permitted with a coal mine that will provide a 30-year fuel supply under common ownership or control.